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LAW OFFICES  
**KOTEEN & NAFTALIN, L.L.P.**  
1150 CONNECTICUT AVENUE  
WASHINGTON, D.C. 20036

BERNARD KOTEEN\*  
ALAN Y. NAFTALIN  
ARTHUR B. GOODKIND  
GEORGE Y. WHEELER  
MARGOT SMILEY HUMPHREY  
PETER M. CONNOLLY  
M. ANNE SWANSON  
CHARLES R. NAFTALIN  
GREGORY C. STAPLE  
R. EDWARD PRICE  
\* SENIOR COUNSEL

**RECEIVED**

TELEPHONE  
(202) 467-5700  
TELECOPY  
(202) 467-5915

June 3, 1997

**JUN - 3 1997**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

In re: WB Docket No. 97-115

Dear Mr. Caton:

Transmitted herewith, on behalf of MobileMedia Corporation, et al., are an original and fourteen copies of a "Reply to Wireless Telecommunications Bureau's Opposition to MobileMedia's Motion to Delete Issue 14(b)," which is filed in connection with WT Docket No. 97-115. Pursuant to the Commission's Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture in this proceeding, this matter has been certified to the Commission by the Presiding Officer.

In the event there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



Arthur B. Goodkind

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List ABCDE

cc (w/enc.): The Honorable Joseph Chachkin

All persons listed on Certificate of Service

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JUN - 3 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of )  
)  
MOBILEMEDIA CORPORATION, et al. ) WT Docket No. 97-115  
)  
Applicant for Authorizations )  
and Licensee of Certain )  
Stations in Various Services )

To: The Commission

**REPLY TO WIRELESS TELECOMMUNICATIONS BUREAUS'S OPPOSITION  
TO MOBILEMEDIA'S MOTION TO DELETE ISSUE 14(b)**

MobileMedia Corporation and its licensee subsidiaries ("the Company"), debtors-in-possession, by their attorneys, hereby reply to the Opposition filed by the Wireless Telecommunications Bureau (the "Bureau") on June 2, 1997 to the Company's "Motion to Delete Issue 14(b)" in the above-captioned proceeding.

**INTRODUCTION**

Two critical points emerge clearly from the Bureau's Opposition:

First, there are no facts or circumstances that could form the basis for issue 14(b) other than the facts and circumstances dealt with explicitly in the Company's Motion to Delete. The

Bureau thus concedes the definition of the issue presented in the Motion -- i.e., that it is based solely on alleged non-disclosures concerning the Company's Senior Vice President\Chief Technology Officer in the October 15, 1996 Counsel's Report to the Commission.

Second, the Opposition makes it absolutely clear that the Bureau's view of issue 14(b) is based not on any failure to disclose facts in the October 15 Counsel's Report, but rather on an argument that better words might have been used by the counsel who drafted the Report in characterizing facts that (a) were disclosed elsewhere in the Report and (b) repeatedly made clear to the Bureau during the course of the long pre-hearing investigation.

What the Bureau's Opposition fails to show is any plausible reason to believe that anyone involved in preparing or submitting the Counsel's report intended to mislead the Commission or to withhold relevant information. Without such a basis, issue 14(b) is based solely on surmise. Such unsupported conjecture cannot justify inclusion of any hearing issue, and most particularly an issue going to the character and integrity of all persons falling within its scope.

As we show below, none of the Bureau's specific arguments

withstands analysis.

**THE BUREAU'S SPECIFIC RESPONSES  
TO THE MOTION ARE WITHOUT SUBSTANCE**

(1) The Todd Wheeler Matter. The Opposition (pp. 2-3) makes it clear that there is no dispute of fact that the "employee" referred to in the Counsel's Report as questioning the propriety of filing false applications was Todd Wheeler, a non-officer, not Mark Witsaman. Given this lack of factual dispute, the Bureau's position now appears to be that the Counsel's Report should somehow be faulted (and those who prepared it charged with intent to deceive) because the Report did not state, gratuitously, that the specific employee referred to in the portion of the report noted above was not Mr. Witsaman. But that position simply ignores the fact that the Counsel's Report never stated or implied that the employee in question was Mr. Witsaman. That was simply the Bureau's erroneous conclusion. Clearly, no intent to mislead could possibly be inferred on the basis of these undisputed facts.<sup>1</sup>

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<sup>1</sup> As noted in the Motion, the narrative portion of the Report did not identify any person by name. The names, job titles and corporate positions of all persons interviewed in the investigation were set out in Exhibit 2 appended to the Report.

(2) Identification of Mr. Witsaman and his knowledge of the false filings in the Counsel's Report. The Bureau contends (Opposition, p. 5) that a hearing is required to determine whether the Counsel's Report "identified Mr. Witsaman as somebody who knew of the wrongdoing." But as shown at pp. 14-17 of the Motion to Delete, Mr. Witsaman was clearly identified by name, job title and corporate position in Exhibit 2 of the Report and his knowledge of the wrongdoing was specifically shown in five separate documents submitted as parts of Exhibits 8, 9 and 12 to the Report. Given these specific submissions and the demonstrated efforts by the Company to provide all information sought by the Bureau concerning Mr. Witsaman and every other person and matter throughout the investigation, there is plainly no rational basis for a hearing to determine facts that are readily apparent from a review of the October 15 Counsel's Report itself.

(3) The intent of the Company's principals. The Opposition appears to assert generally (Opposition, pp. 5-8) that the Declarations of the Company's attorneys submitted with the Motion to Delete fail to address the intent of the Company's principals in submitting the October 15 Counsel's Report. Any such contention is directly contrary to the record before the

Commission.

We note initially that the October 15 Counsel's Report was precisely that -- a report prepared by counsel at the direction of the Company's Board. As stated in the Declarations of counsel filed with the Motion to Delete, counsel prepared the Report and presented it to the Company for review as an effort that fulfilled the total disclosure effort mandated by the Board. The Company was accordingly entitled to place reliance on the Report as the work product of its professional counsel.

In any event, the Company has spoken directly to this issue. The record includes the December 16, 1996 Declaration of the Board's Chairman and then interim Chief Executive Officer, David Bayer, which stated that Mr. Bayer had reviewed the October 15 Counsel's Report, that it was the Company's intention that the Commission be able to rely on the truthfulness and accuracy of the Company's submissions concerning the investigation, and that:

[t]oward that end, we have provided not only facts which the Company and I believe to be true and accurate in all material respects, but also the underlying basis for those beliefs -- i.e., relevant and material documents, witness accounts, and other information which we received and reviewed. As the Company's interim Chief Executive Officer, I do, on this basis, certify that the Submissions, including the lists attached thereto, are true and accurate to the

best of my knowledge and belief.<sup>2</sup>

There is no extrinsic evidence or any other basis in the extensive record of this case -- or in the Bureau's Opposition -- for questioning this certification.

(4) The words used in the Report. In the end, the Bureau's position is reduced to an attack on the words used by counsel to characterize facts presented elsewhere in the Report and also disclosed repeatedly in later filings and discussions with Bureau staff, not on any failure to present the relevant facts themselves. But a hindsight query of this sort about words used to characterize facts otherwise fully presented -- and particularly against a backdrop of total cooperation and fully forthcoming presentations throughout this proceeding -- provides no basis for inferring an intent to deceive on the part of anyone.

The Bureau's flawed analysis is well illustrated by its contention (Opposition, pp. 4-5) that Mr. Witsaman should have been deemed a person involved as "a matter of responsibility" for the filing of false applications.

Based on extensive documentary evidence, employee interviews

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<sup>2</sup> Certification of David A. Bayer (submitted as a declaration under penalty of perjury), December 16, 1996.

and Mr. Witsaman's own deposition, there is not and has never been any substantial or material issue of fact as to what Mr. Witsaman did or did not do or about Mr. Witsaman's knowledge that false applications were being filed. The more difficult question for the Company from the outset has been whether these facts called for Mr. Witsaman's termination. Given the total circumstances described in detail in the Company's prior filings and in other communications with the Commission's staff, the Company concluded that because Mr. Witsaman had not himself made false filings and had not been in the chain of command above the person who made the false filings, his termination was not required. This is a judgment that the Commission has always been entitled to question (and was, during the investigative process, specifically invited to question) in evaluating the Company's total response to the wrongdoing it discovered and reported, but the Company's decision on this question is an issue wholly separate and distinct from any question of candor in reporting to the Commission. The Bureau's Opposition fails to recognize this critical distinction and thus elevates a disagreement over descriptive terminology to a far more substantive, albeit unsupported, allegation of misrepresentation.

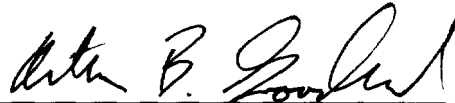


**CONCLUSION**

Issue 14(b)'s inclusion in this proceeding was based on plain mistakes of fact and an incomplete reading of the Counsel's Report. The Bureau's Opposition to the Motion to Delete not only fails to justify inclusion of the issue but, when analyzed, only serves further to demonstrate how inappropriate the issue is on the facts of this case. Issue 14(b) should accordingly be deleted.

Respectfully submitted,

MOBILEMEDIA CORPORATION

A handwritten signature in dark ink, appearing to read "Alan Y. Naftalin", is written over a horizontal line.

Alan Y. Naftalin

Arthur B. Goodkind

Koteen & Naftalin, L.L.P.  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 467-5700  
Its Attorneys

June 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 1997, I caused copies of the foregoing "Reply to Wireless Telecommunications Bureau's Opposition to MobileMedia's 'Motion to Delete Issue 14(b)'", to be hand-delivered to the following:

The Honorable Joseph Chachkin  
Federal Communications Commission  
2000 L Street, N.W.  
Room 226  
Washington, DC 20554

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, DC 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, DC 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, DC 20554

Mr. William E. Kennard  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 614  
Washington, DC 20554

Daniel B. Pythyon  
Acting Chief  
Wireless Telecommunications Bureau  
2025 M Street, N.W., Room 5002  
Washington, DC 20554

Rosalind K. Allen  
Deputy Chief  
Wireless Telecommunications Bureau  
2025 M Street, NW, Room 5002  
Washington, DC 20554

Gary P. Schonman  
Enforcement Division  
Wireless Telecommunications Bureau  
2025 M Street, NW, Room 8308  
Washington, DC 20554

D. Anthony Mastando  
Enforcement Division  
Wireless Telecommunications Bureau  
2025 M Street, NW, Room 8324  
Washington, DC 20554

  
Phillis Merriett

June 3, 1997